

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
AND NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **September 19, 2013**, at 10:00 a.m.
in Room 1 of the Harris State Building
1515 Clay Street, Oakland, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **September 19, 2013**, at 10:00 a.m.
in Room 1 of the Harris State Building
1515 Clay Street, Oakland, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING: On **September 19, 2013**, at 10:00 a.m.
in Room 1 of the Harris State Building
1515 Clay Street, Oakland, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE: Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

DAVE THOMAS, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **September 19, 2013**.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 106, New Section 5120
[Safe Patient Handling](#)

Descriptions of the proposed changes are as follows:

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 106, New Section 5120
Safe Patient Handling

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Pursuant to California Labor Code Section 142.3, the Occupational Safety and Health Standards Board (Board) may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe, where appropriate, suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and provide for monitoring or measuring employee exposure for their protection.

In 2011, Assembly Bill 1136, the Hospital Patient and Health Care Worker Injury Protection Act, was enacted with the stated purpose of protecting registered nurses and other health care workers from patient handling injuries and to provide patients with safe and appropriate care. AB 1136 created a new Labor Code (LC) Section 6403.5 which took effect January 1, 2012. This section requires general acute care hospitals (GACHs) to implement specific safe practices for handling patients as part of their existing Injury and Illness Prevention Plans (IIPP), already required by the Injury and Illness Prevention Program standard, Section 3203. LC Section 6403.5 does not apply to GACHs within the Department of Corrections and Rehabilitation or the State Department of Developmental Services.

LC Section 6403.5 requires the hospital to adopt a patient protection and health care worker back and musculoskeletal injury prevention plan (Plan). The Plan is intended to implement a safe patient handling policy that includes requiring the replacement of manual lifting and transferring of patients with powered patient transfer devices, lifting devices, and lift teams, as appropriate for the specific patient and consistent with the employer's safety policies and the professional judgment and clinical assessment of the registered nurse. LC Section 6403.5 also requires employers to provide training to staff members who conduct the patient handling to enable them to use the techniques and equipment that are to be used for this purpose. This LC Section also provides employees with specific protection from discrimination on the part of the employer for a refusal to conduct a patient handling action that seems unsafe to either the employee or the involved patient.

The Division of Occupational Safety and Health (Division) developed this proposal with the assistance of advisory stakeholders in order to ensure that the proposal provided sufficient protection for employees in these work settings and provided employers with sufficient flexibility to address these risks in the least burdensome manner.

Specific Effects of the Proposed Standard

Proposed subsection (a) establishes that all general acute care hospitals are required to comply with the provisions of this section in order to be consistent with AB 1136, the Hospital Patient and Health Care Worker Injury Protection Act. The intended effect is to identify the affected employers.

The effect of Exception (1) is to exempt from this standard GACHs within the Department of Corrections and Rehabilitation and the State Department of Developmental Services in order to be consistent with LC Section 6403.5(h) which excludes these institutions from the requirements of the section.

The effect of Exception (2) is to exempt units within GACHs that are designated by the California Department of Health Services, Licensing and Certification Division as “distinct parts” even though they are included in the license that is issued to the GACH that maintains the unit as specified in Title 22 Sections 70625 and 70627. These units provide care that is similar in nature to skilled nursing facilities that are not covered by LC Section 6403.5, and consequently, are not covered by the requirements of the proposed section.

Proposed Note to subsection (a) establishes that this proposed section does not prevent the application of Section 3203 or other safety orders to patient handling issues in other health care facilities, services and operations that are not within the scope of this subsection. The effect is to clarify that employers are still responsible for identifying and correcting health and safety issues as has been required by Section 3203 and other sections of these orders before this rulemaking. The note also establishes that the proposed section does not preclude the application of other sections of Title 8, including, but not limited to Sections 3203 and 5110, to patient handling in GACHs. The effect of this provision is to inform hospitals of existing legal requirements.

Subsection (b) of the proposed standard includes a number of definitions. The effect of these definitions is to establish the exact meanings for the terms as used within the context of the requirements of Section 5120 and to clarify that the terms, as used, may have more specific meaning for safe patient handling than they would in the more general usage.

Subsection (c) requires employers to establish, implement and maintain an effective written Plan. The subsection allows the Plan to be incorporated into the hospital’s IIPP, or kept as a separate document. The effect of the subsection is to establish the basic elements that an employer would be responsible for addressing through its IIPP under Section 3203, as required by LC Section 6403.5. Since the LC does not list detailed elements for the Plan, the proposal specifies appropriate elements, listed in subsections (c)(1)-(c)(9), which include an effective safe patient handling policy component, the designation of person(s) responsible for the Plan implementation, methods the hospital will use to coordinate the implementation of the Plan with other employers whose employees have work assignments that include being present on patient care units, procedures to ensure that supervisory and non-supervisory employees comply with the Plan and use specified procedures and equipment when performing a patient handling activity, procedures for identifying and evaluating patient handling hazards, procedures for the investigation of musculoskeletal injuries related to patient handling, procedures for correcting hazards related to patient handling, procedures for communicating with employees regarding safe patient handling matters, and procedures for providing training to employees who may be present in patient care units. These elements reflect requirements in Section 3203 for an IIPP, as they are applied to patient handling activities.

Subsection (c)(10) requires a GACH to make a list of the corrective measures identified as required by subsection (c)(7)(B) that cannot be implemented by the effective date of this standard. This list will include the control measure, method of implementation, reason for the delay, and schedule for implementation. Implementation is to be completed within one year of the effective date of the standard. The effect of this is to establish a process and time frame for the GACH to correct equipment issues.

Subsection (c)(11) requires procedures for reviewing, at least annually, the effectiveness of the Plan in each patient care unit, which shall include a review of injury data and trends. The review of injury data is intended to provide a meaningful basis for determining if the Plan is working over time and in comparison with other, similar care units. The Plan is also required to include an effective procedure for obtaining the active involvement of employees in reviewing and updating the Plan with respect to the

procedures performed by employees in their respective work areas or departments. The intended effect is to allow the employer to have a process to identify and correct problems with the Plan, correct other deficiencies, and prevent further injuries to employees and patients in accordance with subsection (c)(6) and Section 3203.

The effect of proposed subsection (d) is to establish requirements for the employer to provide training to employees whose work assignments require them to be present in patient care units, on safe patient handling activities they are reasonably anticipated to perform. This general requirement is established by LC Section 6403.5(b). The proposal establishes the details of the training as follows:

Subsection (d)(1) establishes the frequency of the different categories of training. Training would be required at the time of initial assignment and at least annually for designated health care workers, lift team members, designated registered nurses and supervisors covered by the Plan. Additional training would be required when new equipment or work practices are introduced.

Subsection (d)(2) establishes the content of the initial training for designated health care workers, lift team members, designated registered nurses and supervisors of employees who work in patient care units. The content is consistent with LC Section 6403.5(b). It requires the training to include elements that are applicable to the employee's assignment.

Exception to (d)(2) establishes that employers who have provided initial safe patient handling training to their employees prior to the effective date of this standard may limit the content of training to elements listed in (d)(2)(A)-(N) that were not included in the previous training. The intended effect is to make the training less burdensome for employers who complied with LC Section 6403.5(b) while assuring that the content of this subsection is provided to their employees.

Subsection (d)(3) establishes refresher training content for designated health care workers, lift team members, designated registered nurses and supervisors as applicable to the employee's assignment.

Subsection (d)(4) establishes the requirement for employers to provide awareness training for employees other than those identified in subsections (d)(2) and (d)(3) whose job assignment includes being present on patient care units. This training content includes the recognition of the patient interactions that require the involvement of designated health care workers, or lift teams, how to obtain that involvement when necessary, and procedures to follow for emergencies relating to safe patient handling.

The effect of proposed subsection (e) is to establish recordkeeping requirements applicable to all employers covered by this section. The effect of subsection (e)(1)(A) is to provide documentation for the process of equipment evaluation, selection, and implementation. The effect of subsection (e)(1)(B) is to provide documentation for inspections related to patient handling procedures. The effect of (e)(1)(C) is to document the investigations of occupational injuries and illnesses required by subsection (c)(5). General acute care hospitals that are operated by local governmental entities are subject to Section 3203(b)(2)C Exception No. 4 and thus are not required to keep records concerning the steps taken to implement and maintain the Plan specified in subsection (e)(1)(A)-(B).

The effect of subsection (e)(2) is to require employers to have records for the training established in subsection (d). The intent is to assure that employees have received the training required by this Section

and to be consistent with Section 3203(b)(2). The subsection also establishes that these records are to be maintained for a minimum of one year to assure that the administrative personnel overseeing the training process can identify the personnel who require training over time, and comply with the refresher training requirement.

The effect of subsection (e)(3) is to provide that the records required by this subsection must be made available to the Chief of the Division and his or her representatives for examination and copying. This is consistent with Section 3204 and numerous other sections in Title 8 and the effect is to allow the Division to determine if an employer is complying with the requirements of this Section.

The effect of subsection (e)(4) is to provide that the records required by subsection (e) must be made available to employees and their representatives for examination and copying as employee exposure records in accordance with Section 3204(e)(1). The intended effect is to be consistent with Section 3204 and LC Section 6408.

The effect of subsection (e)(5) is to require that records of injury investigations not include medical information as defined by Civil Code Section 56.05. This is intended to create a non-confidential record of the injury investigation that can be included in the review of the Plan.

The effect of subsection (e)(6) establishes that occupational injury and illness occurrences may require separate records that are required by Title 8, Division 1, Division of Labor Statistics and Research, Chapter 7, Subchapter 1, Occupational Injury or Illness Reports and Records. These include the Cal/OSHA Form 300, Log of Work-Related Injuries and Illnesses; the Cal/OSHA Form 300A, Summary of Work-Related Injuries and Illnesses; the Cal/OSHA Form 301, Injury and Illness Incident Report; or equivalent forms, as well as the Form 5020, Employer's Report of Occupational Injury or Illness Form; and Form 5021, Rev. 4, Doctor's First Report of Occupational Injury or Illness.

Appendix A (non-mandatory) contains examples of professional occupational safety guidelines for the protection of patients and health care workers in health care facilities. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board is “the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Differs from existing federal regulations, in that federal OSHA does not have a specific counterpart standard for safe patient handling in general acute care hospitals.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts and the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

- The proposal will enhance the safety of employees and patients with the implementation of a health care worker back and musculoskeletal injury prevention plan, and is the least burdensome alternative for achieving compliance with LC 6403.5.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action. Assembly Bill 1136, passed in 2011, amended the Labor Code creating LC 6403.5 that went into effect on January 1, 2012. LC 6403.5 required general acute care hospitals to implement safe patient handling procedures and adopt a policy for doing so by adding it to the existing Injury and Illness prevention programs that are required by Labor Code 6401.7 and CCR T8 GISO 3203 enforced by the Division of Occupational Safety and Health. This proposed standard establishes more detailed language to clarify the more general requirements in AB 1136. These requirements are consistent with Section 3203 and existing requirements in Title 22, already followed by general acute care hospitals, without creating requirements that were not established by the legislation, and therefore do not impose costs beyond what have been created by the legislation itself. The proposal also exempts general acute care hospitals within the State Department of Corrections and Rehabilitation or the State Department of Developmental Services.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Assembly Bill 1136, passed in 2011, amended the Labor Code creating LC 6403.5 that went into effect on January 1, 2012. LC 6403.5 required general acute care hospitals to implement safe patient handling procedures and adopt a policy for doing so by adding it to the existing IIPPs that are required by LC 6401.7 and CCR T8 GISO 3203 enforced by the Division . This proposed standard establishes more detailed language to clarify the more general requirements in AB 1136. These requirements are consistent with Section 3203 and existing requirements in Title 22, already followed by acute care hospitals, and therefore do not impose costs beyond what have been created by the legislation itself.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 175000 through 17630.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses. This proposed standard establishes more detailed language to clarify the more general requirements in AB 1136.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

These requirements are consistent with Section 3203 and existing requirements in Title 22, already followed by acute care hospitals, without creating requirements that were not established by the legislation, and therefore do not impose costs beyond what have been created by the legislation itself.

Therefore, the adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

BENEFITS OF THE REGULATION

This proposal should reduce the number of injuries, many of which are career-ending, suffered by health care workers who conduct patient handling procedures by requiring GACH employers to identify and utilize equipment and techniques that reduce the force required to lift and maneuver patients. This should also reduce the number of injuries to patients by lowering the risk that they will be inadvertently dropped or otherwise injured. Consequently the number of workers’ compensation claims and patient injury claims against GACHs should also decrease. Labor Code 6403.5 (AB 1136) requires GACHs to address safe patient handling through various means. This proposal creates an enforceable regulation that provides clear guidance to employers and employees regarding how to implement this law.

ALTERNATIVES STATEMENT

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected

private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than **September 13, 2013**. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on **September 19, 2013**, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

DAVE THOMAS, Chairman